

**Letter of Findings: 01-20120474P**  
**Individual Income Tax**  
**For the Tax Year 2010**

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**ISSUE**

**I. Individual Income Tax – Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer seeks abatement of a ten percent penalty imposed by the Indiana Department of Revenue.

**STATEMENT OF FACTS**

Taxpayer was assessed a ten percent penalty by the Indiana Department of Revenue ("Department") for the tax year 2010. Taxpayer filed a protest regarding the proposed assessment. The Department conducted an administrative hearing by telephone, and this Letter of Findings results. Further facts will be provided as required.

**I. Individual Income Tax – Penalty.**

**DISCUSSION**

Taxpayer argues that it is entitled to abatement of a ten percent penalty. Taxpayer argues that it was "the obligation of another entity to pay" the taxes. Taxpayer explains its facts thusly:

[Taxpayer], a Texas resident, owns [Company S], a Texas LLC, which owns a 49 percent interest in [Company C], an Indiana LLC.

And further:

[Company S], has no control over [Company C]. [Company S] received payments from [Company C] in 2010.

[Company C] was required by Indiana law to withhold on its nonresident partners, but failed to do so.

[Company S] made payments to [Taxpayer] in 2010, which did not require any Indiana withholding.

Taxpayer asserts he "was justified in expecting [Company C] to properly report and withhold any Indiana income taxes that would be due on behalf of its non-resident partners...." Taxpayer then cites to Indiana's IT-65 Partnership Return booklet regarding partnerships.

Taxpayer then states:

[Company C] failed to meet its withholding obligation in 2010. When [Taxpayer] discovered [Company C's] error in early 2011, [Company C] told him it was too late for them to pay over the required taxes. Therefore, [Taxpayer] immediately filed a late 2010 Indiana individual income tax return and paid the taxes himself.

Beginning in 2011, [Company C] began to properly withhold and remit the state income taxes as required.

At the hearing, Taxpayer's representative argued that Taxpayer reasonably relied upon [Company C's] withholding duty, and that Taxpayer had relied upon the advice of a tax professional.

The Department notes that under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including an assessment of a penalty – is presumptively valid.

Turning to the relevant statute and regulation, IC § 6-8.1-10-2.1 states in part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id. IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Based upon a "case-by-case" analysis and after reviewing "the facts and circumstances" of the Taxpayer, the Department finds that Taxpayer has established "reasonable cause" and that the penalty should be abated. Taxpayer relied upon the reporting duties of Company C, and upon Taxpayer's discovery that Company C had not properly reported, Taxpayer "filed a late 2010 Indiana individual income tax return and paid the taxes himself."

**FINDING**

Taxpayer's protest is sustained.

*Posted: 03/27/2013 by Legislative Services Agency*

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